

DEED vs EVIDENCE

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The topic I have been asked to discuss today will be dealt with from the viewpoint of one practising surveyor whose experience is almost completely gained in Southwestern Ontario.

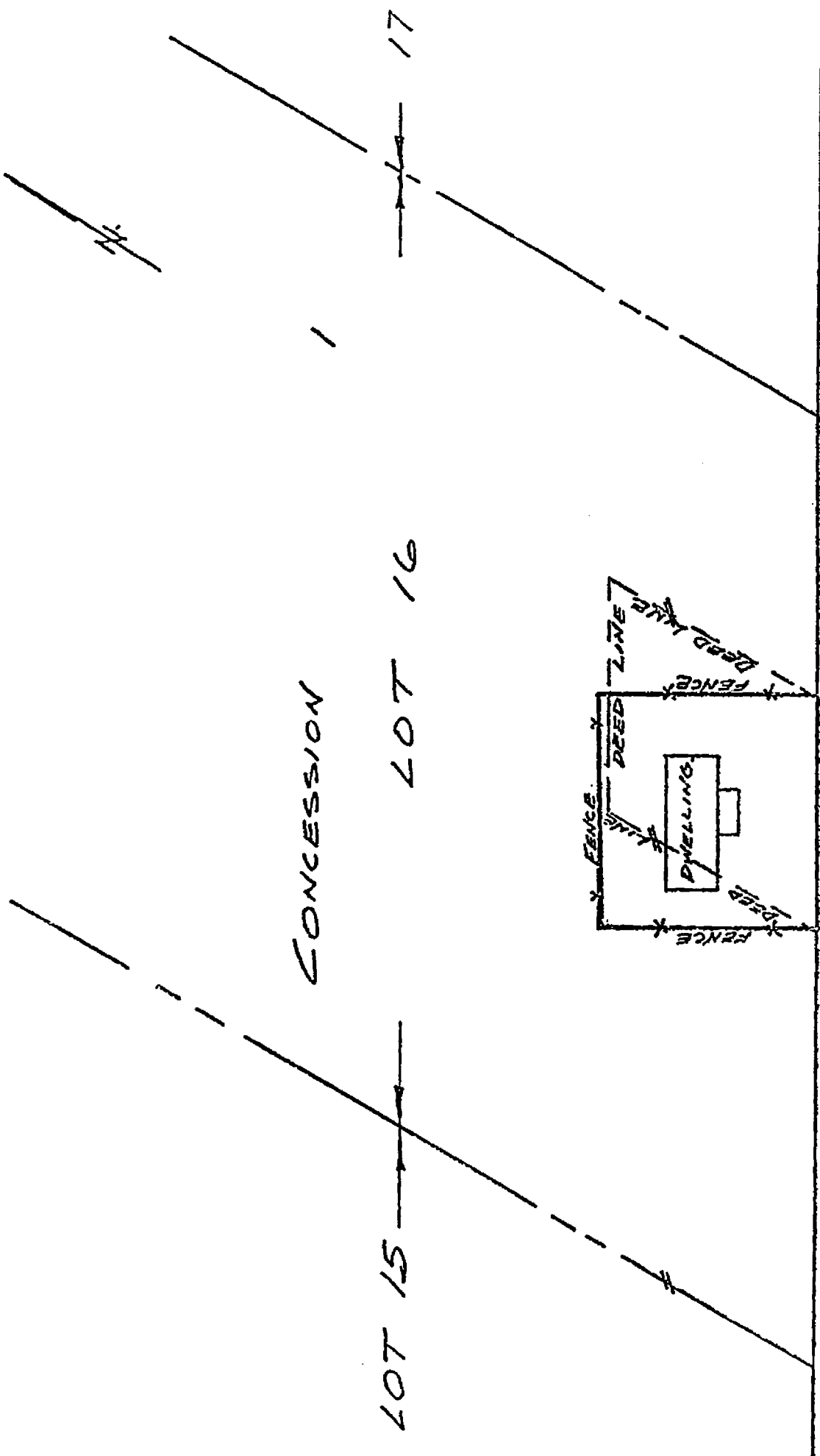
As most of you are aware, there is very little land registration in the southern part of the Province under The Land Titles Act. The Registry Act provides the only means in most instances of recording land descriptions and transactions. Many areas do not at this time have a Land Titles Office for even new subdivisions and consequently, even these are still being registered under The Registry Act.

The area of Ontario in which I practise did not have a resident surveyor on any permanent basis until about 1949. Prior to this what little survey work that was done in the area was done by surveyors located anywhere from 27 to 75 miles away. In addition, there was quite a bit of work done by unqualified people such as grandfathered engineers.

As a consequence there are no survey records of value in the area dating back much more than 30 years. Even survey notes of the original township surveys are of no use when one wishes to determine a dimension of a particular lot or road allowance, since the total field notes available for a group of about six single front townships consists of about 2 pages of notes outlining the method of determining the lot dimension and road widths for the entire block, and even this is not of any value because the mathematics are in error.

Such items as original monuments of townships surveys or even old town subdivisions are only a theoretic dream. At this point in time it is in almost all cases impossible to determine the original limits of a boundary in any of the old town plans or township surveys.

This preamble brings us to the topic "Deed vs. Evidence". The Surveys Act is the one piece of legislation that is intended to provide guidelines for the establishment of boundaries. We all remember as students struggling with this statute in order to pass our OLS exams. When one reads this Act it appears on the surface to be the answer to all survey problems. However, as we all know The Surveys Act only scratches the surface. Consequently, we find it necessary to adapt and use common sense more than anything written in law. I understand that in certain areas of the Province The Surveys Act has its own peculiar interpretations such as in the Stratford area where Fred Pearce is the administrator of a piece of non-legislation known as The Surveys Act (Pearce Translation). I am

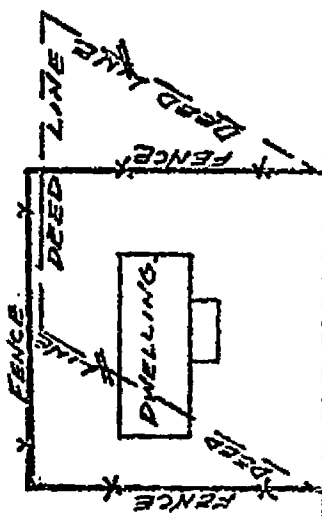


CONCESSION

LOT 15

LOT 16

LOT 17



ROAD ALLOWANCE

certain that in the southern sections of the Province there are many more translations of a similar nature.

Unfortunately economics prevents us from doing as much research on a particular job as we should, however, my experience in this area of Ontario seems to indicate that there is very little to be gained by attempting extensive research and in almost all incidents the results are unchanged as a result of time spent.

(sketch)

An example of the problems encountered in completion of field work is shown on the screen.

It is necessary to locate the SE angle of Lot 7 for a lot angle tie. As you will notice the SE $\frac{1}{4}$ of Lot 6 and the southwest $\frac{1}{4}$ of Lot 7 are in the same ownership. There is no evidence of the line between Lots 7 and 8. The concession line east of Lot 8 is broken by a river and the road between concessions I and II leaves the road allowance for about 3 lots. The concession line in this area is obliterated and there is no further evidence of a lot line until Lot 11/12, a distance of about 2 miles which would have to be traversed along a winding road. The distance bearing between Lot 11/12 and the southwest angle of Lot 7 could then be calculated and the location of the SE angle of Lot 7 established. This method would likely have the blessing of the theorists in the crowd since it closely follows the Surveys Act. However, due to economic considerations this method was quickly discarded and we accepted the two half lot fences as shown on the sketch as being the best evidence of the lot line and divided the distance between them equally to establish the lot corner. I am certain that the next surveyor in the area will be pleased to use the newly planted bar as evidence of the lot angle.

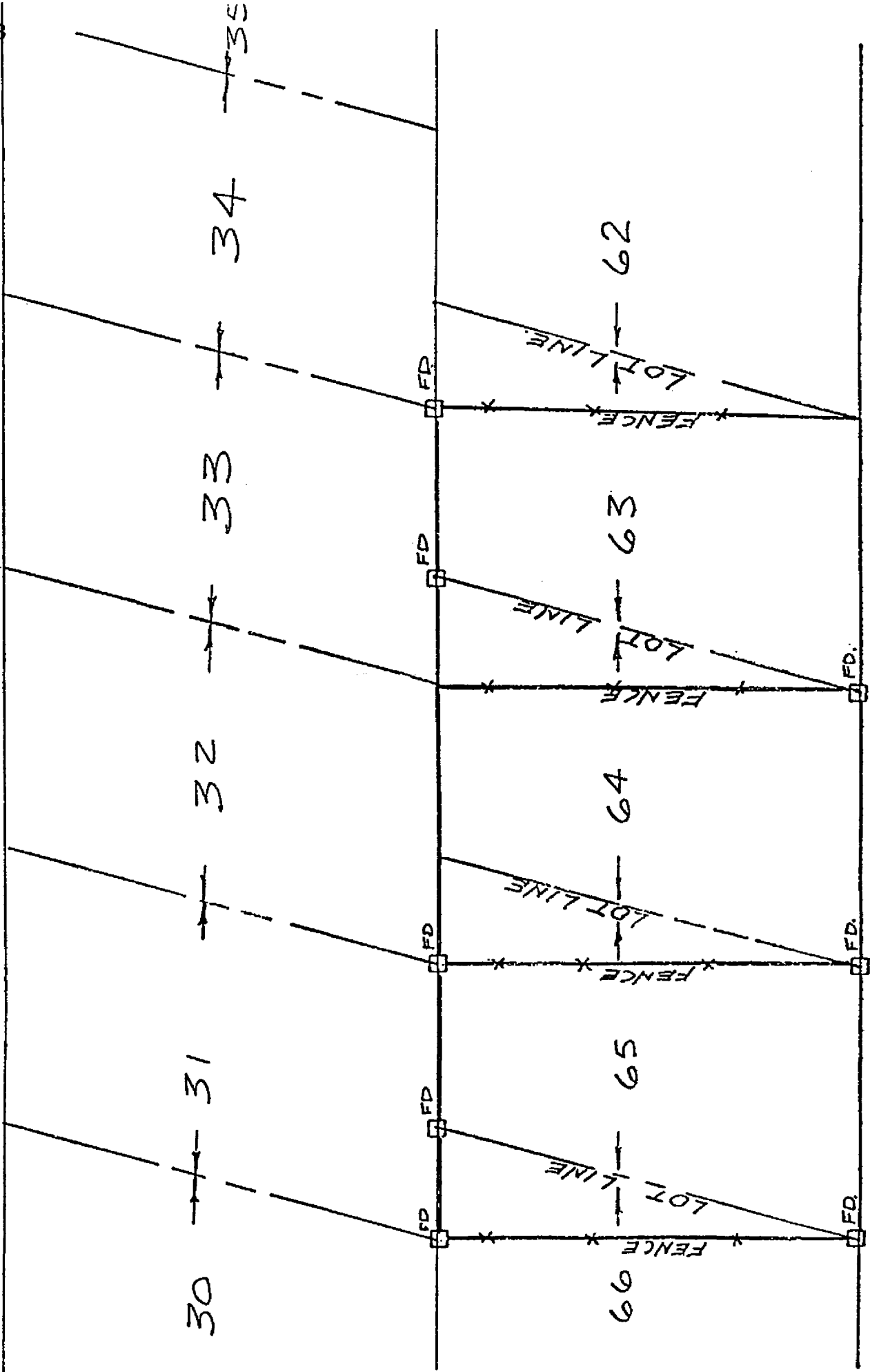
(sketch)

This next sketch is a very standard problem that occurs where the deed was drawn with reference to the lot lines, namely, that the side limits are parallel with one or the other line which runs at an angle other than 90' with the front of the concession. The deed was drawn and the vendor, who was selling the lot from a larger parcel (farm) together with the purchaser go to the site and proceed to lay out the property as they think it should be. They then attended at their lawyer's office or as often was the case in smaller centres, the conveyancer's office and a deed is drawn using what little information is available to the lawyer. The result is as shown. Some time later the property changes hands, or the owner requires a mortgage and a survey is required, the surveyor finds the problem on the site and likely confers with the lawyer for his client. If all parties involved are co-operative, then it is no problem to straighten out the title by any of the following methods:

- (1) correcting deed from the original vendor or his successors.
- (2) quit claim deeds to and from each party involved.
- (3) do nothing except prepare an "R" plan and place it on title showing the lands are occupied as the lands in the

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deed by showing the various comparisons of distance and bearing.

If no co-operation is forthcoming then there is every chance of litigation. (sketch)

Let us take a look at a problem in a town plan that generally fits quite well with the ground evidence.

A street line between two blocks was established 20 to 30 years ago by a surveyor probably using the best evidence that he could find at the time. Subsequently, it is found that the block to the east is about 3 feet short in depth while the block to the west is 3 feet long in depth. Up until this time everybody accepted their shortage or surplus without argument.

Along comes modern surveyor to do a simple location certificate for mortgage purposes, quite satisfied to accept previous monumentation in the area, however, we are equipped with an electronic bar finder and in our search for the abovementioned evidence we find another series of bars and pipes buried about $3\frac{1}{2}$ feet in the ground all fitting location of lot lines quite well and in very good alignment with themselves but located 3 feet west of the line established in the last 30 years. If this new found line is accepted, the block depths will now fit the plan quite well, but in accepting the new found line hydro and telephone poles will be located on private property and several dwellings which were built in recent years will be in contravention of the set back regulation, in the building by-law. It seemed to me that the most reasonable solution to the problem was not to create a problem and accept the lines as established in recent years. I simply ask, what would you do under similar circumstances.

Let us take a look at the sketch on the screen (sketch)

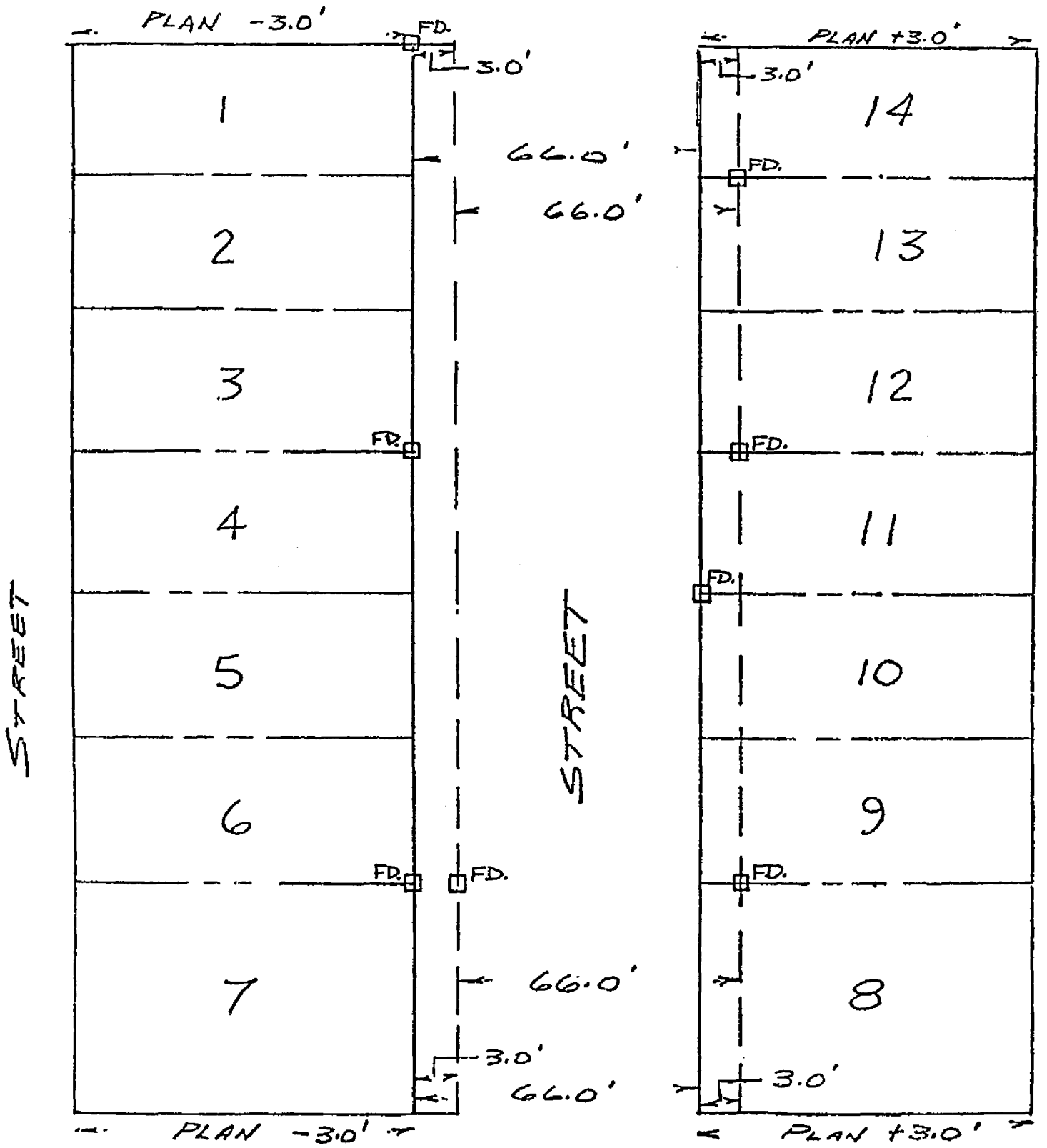
You see a block on an old town plan dating back about 90 years. About 15 years ago the town hired a surveyor to establish all the block corners in the town. These were monumented using SIB's or cut crosses where concrete interfered. Since that time these block corners have become the basis for most survey work in the old sections of the town. Generally speaking they work very well and very little in the way of problems have been caused by this.

This particular block was established using survey evidence by another surveyor from out of the area who did not believe in proportional division and established lot lines at the north and south end of the block by net measurements from the closest block corner. There is a surplus distance in the block of about 3 feet due to previous surveys to all rest in the central lots in the block.

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PLAN -3.0'

PLAN +3.0'



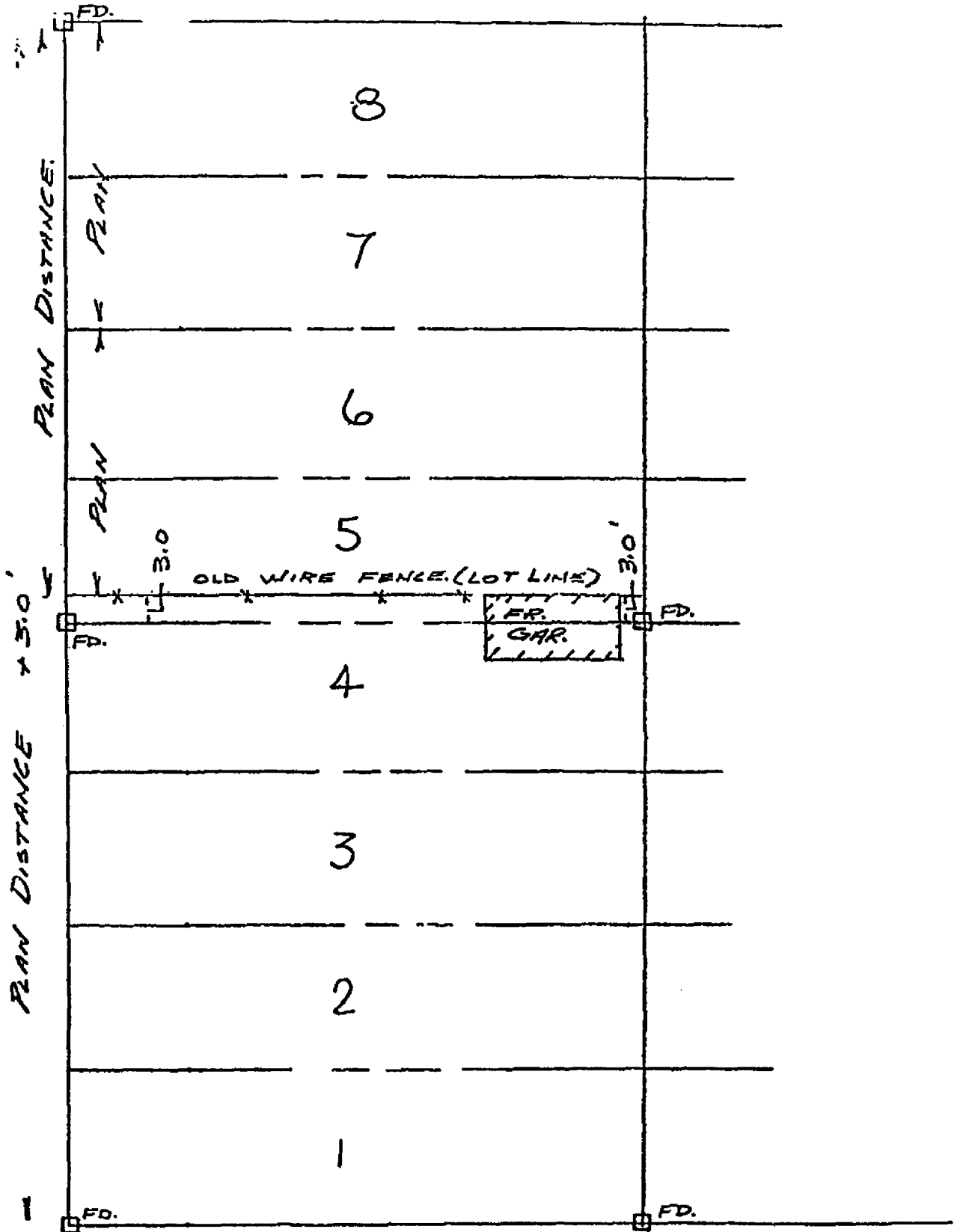
PLAN -3.0'

PLAN +3.0'

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We are required to do a survey of lot 8 and investigation shows an iron bar (not identified) at a point net distance north of the block corner at the apparent NW angle. There is also a bar located at the apparent North East angle of the lot.

Site examination reveals an old fence (at least 40 years) approximately 3 feet north of the iron bars found on the site. There is also a garage at the rear of Lot 8, built almost to the fence line.

Had there been no monumentation present it would have been my decision to accept the fence line as the best evidence of the lot line and allow the surplus land to rest in lots 8, 9 and 10.

Investigation northerly reveals possessory limits roughly fitting the plan dimensions, however, none are as good as the fence found between lots 7 and their position could vary by as much as a couple of feet, (hedges, limits of mowed areas, etc.)

It seems to me that the correct procedure to follow in this instance is to prepare an "R" plan and take declarations from the previous owners which went back at least 30 years as to the fact that the subject fence had been used and understood to be the lot line. However, when this was brought to the attention of the lawyers involved in the sale contrary to suggestions from ourselves, went to the owners of Lot 7 and asked them for a quit claim deed to that part of Lot 7 that lay south of the fence. Seeing that they (the owners of Lot 7) may actually have more land than they thought they had and being apparently somewhat greedy, they refused to quit claim.

The present status of this is that the owners of the lands to the north under the advice of a lawyer who should know better, are threatening legal action to acquire lands that they have no right to acquire.

How much easier it would have been to accept the fence as the lot line which we wanted to do and thereby avoid litigation since the owner to the north would have been unaware that there was a possibility of there being anything wrong with the title in the first place.

Based on the previous illustrations, there are probably some very common examples to very common problems. It is my opinion, and I stand to be corrected on this, that most cases of adverse possession are brought about by faulty descriptions and not by conscious effort by a person to defraud his neighbour of land to which he has no right. The faulty descriptions may well have been prepared by a surveyor, based on survey-it, may not have been 'we don't know', and I don't think we need to elaborate on that. Similarly an individual may convey ... or mortgage land to which his title has been extinguished by adverse possession in all innocence. And I think probably the greatest danger I see is not so much the individual..., and I stand to be corrected in law on this, but the individual who has the land by adverse possession, he probably isn't in any great difficulty, but what happens to the mortgage company, that loans money on this particular

piece of land, by the paper title and somewhere along the line, somebody says: "To heck with you. That piece of paper doesn't cover the land in question at all. Go collect your mortgage from somebody else."

I don't have anything else to add to this, except thank you and if there are any questions or any discussions, I'd be happy to take part in it.